

DUFFY AND LAUFER

Attorneys At Law
814 Elm Street
Manchester, NH 03101
603 647-8887



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559873

PETER J DUFFY
DANIEL A. LAUFER

RECEIVED

MAY 07 1991

EPA/ORC
CERCLA III Office

May 1, 1991

Cynthia E. Catri
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region I
JFK Federal Building, RCV
Boston, MA 02203-2211

Superfund Records Center
SITE: Coakley
BREAK: 11.9
OTHER: 559873

Tupper E. Kinder, Esq.
Ransmeier & Spellman
1 Capitol Street
Box 1378
Concord, NH 03302

Dear Cynthia and Tupper:

I represent Port City Nissan, Inc. ("Port City") of Portsmouth, New Hampshire on the Coakley Landfill matter. Until it received the March 29, 1991 letter from the Environmental Protection Agency ("EPA") my client was unaware of its potential status as a generator of toxic waste at the site. After reviewing my client's involvement, I am sending this letter requesting either the E.P.A. or the Potentially Responsible Parties group release my client from liability. The reasons for the request are as follows:

1. My client, on September 15, 1989, purchased the assets, including the name Port City Nissan, Inc., from the previous owner whose current name is Manning & Evans, Inc. Enclosed as Exhibit A hereto is a xerox copy of the Asset Purchase Agreement. Enclosed as Exhibit B hereto is a xerox of a certified copy of the name change by which Port City Nissan, Inc. became Manning & Evans, Inc.

2. The owners of Manning & Evans, Inc. are Kerry L. Manning and David M. Evans. Mr. Manning lives in Portsmouth and Mr. Evans lives in Kittery, Maine. Their corporation, Manning & Evans, Inc., is still in existence.

3. Mr. Manning and Mr. Evans purchased their corporation in 1984 from John Cutts who operated the corporation under the name Port City Datsun, Inc. for at least five years prior to 1984. Mr. Cutts stil lives in Kittery, Maine.

4. The alleged generation of toxic waste was committed in 1980 when Port City Datsun was a customer of Great Bay Disposal. No provate waste was accepted at the Coakley Landfill after 1982.

5. My client should not be held liable for alleged waste generated by Port City Datsun, Inc. in the early 1980's when Port City Datsun, Inc. was sold to new owners in 1984 and those owners sold only the assets to my client in 1989. This is especially true where Port City Datsun, Inc., the alleged violator, is still in existence under the new name, Manning & Evans, Inc. and all of its previous owners are still living in the Portsmouth area.

6. It is a well known fact that car dealerships are under severe financial pressures. My client is no exception. Given the facts of its situation it is unfair to keep it as a Potentially Responsible Party when no liability on its part can be shown.

In view of the foregoing Port City Nissan, Inc. requests that it be released from the Coakley Landfill litigation.

Thank you for your consideration of this matter.

Sincerely,



Daniel A. Laufer

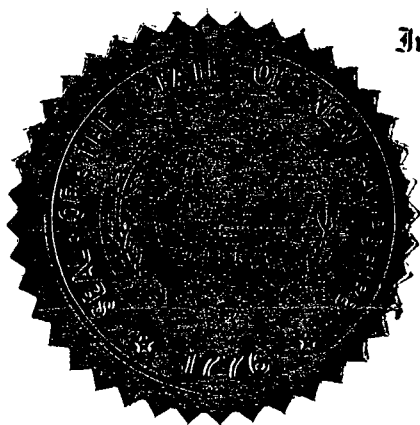
DAL:pht

State of New Hampshire

OFFICE OF SECRETARY OF STATE



I, ROBERT P. AMBROSE, Deputy Secretary of State of the State of New Hampshire, do hereby certify that the following and hereto attached is a true copy of the Articles of Amendment to the Articles of Incorporation of PORT CITY NISSAN, INC. now known as MANNING & EVANS, INC. as filed in this office and held in the custody of the Secretary of State.



In Testimony Whereof, I hereto set my hand and cause to be affixed the Seal of the State, at Concord, this 25th day of April A. D. 19 91.....

Robert P. Ambrose

Deputy Secretary of State

82 254**311**

Filing fee: \$ 25.00

+ License fee: \$ _____ (See Section 136 II, IV
Total fees \$ _____ and Note 7)

Use black print or type.

Leave 1" margins both sides.

Form No. 14
RSA 293-A:61ARTICLES OF AMENDMENT
to the
ARTICLES OF INCORPORATION
OF
Port City Nissan, Inc.**FILED**
DEC 14 1989
NEW HAMPSHIRE
SECRETARY OF STATEPURSUANT TO THE PROVISIONS OF SECTION 61 OF THE NEW HAMPSHIRE
BUSINESS CORPORATION ACT, THE UNDERSIGNED CORPORATION ADOPTS THE
FOLLOWING ARTICLES OF AMENDMENT TO ITS ARTICLES OF INCORPORATION:

FIRST: The name of the corporation is _____

Port City Nissan, Inc.SECOND: The following amendments of the Articles of Incorpora-
tion were adopted by the shareholders (Note 1) of the corporation
on December 14, 19 89, in the manner prescribed by the
New Hampshire Business Corporation Act: (Insert Amendments)
(Note 2)The Articles of Incorporation of Port City Nissan, Inc.
are hereby amended to change the name of the corporation to:

Manning & Evans, Inc.

[if more space is needed, attach additional sheet(s)]

THIRD: The number of shares of the corporation outstanding at the time of such adoption was 150; and the number of shares entitled to vote thereon was 150

FOURTH: The designation and number of outstanding shares of each class entitled to vote thereon as a class were as follows: (Note 3)

<u>Class</u>	<u>Number of Shares</u>
Common Stock without par value	150

FIFTH: The number of shares voted for such amendment was 150; and the number of shares voted against such amendment was 0 (Note 3)

SIXTH: The number of shares of each class entitled to vote thereon as a class voted for and against such amendment, respectively, was: (Note 3)

<u>Class</u>	<u>Number of Shares voted</u> <u>For</u>	<u>Against</u>
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<i>Common stock without par value</i>	<i>150</i>	<i>0</i>
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SEVENTH: The manner in which any exchange, reclassification, or cancellation of issued shares provided for in the amendment shall be effected is as follows: (Note 4)

N/A

EIGHTH: The manner in which such amendment effects a change in the amount of stated capital, and the amount of stated capital, expressed in dollars, as changed by such amendment, are as follows: (Note 3)

N/A

Dated December 14, 19 89

Port City Nissan, Inc. (Note 5)

By Kerry L. Manning (Note 6)
Signature of its President

Kerry L. Manning
Print or type name

and Gerald F. Giles (Note 6)
Signature of its Secretary

Gerald F. Giles
Print or type name

Notes:

1. Change to "board of directors" if no shares have been issued.
2. If amendment is relating to the authorized capital stock, this form must be accompanied by a certificate from the New Hampshire Insurance Commissioner, 169 Manchester Street, Concord, N.H. 03301, that he has received a statement pertaining to the corporation's capital stock pursuant to RSA 421-B:13, I-a.
3. If inapplicable, omit.
4. This article may be omitted if the subject matter is set forth in the amendment or if it is inapplicable.
5. Exact corporate name of corporation adopting the Articles of Amendment.
6. Signatures and titles of officers signing for the corporation. Must be signed by President or Vice-President and Secretary or Assistant Secretary.
7. If amendment increases the authorized stock, include fee according to schedule under RSA 293-A:136 II less amount previously paid in for original authorization and prior increases, provided however that the minimum fee shall be \$30.00.

Mail fee and DUPLICATE ORIGINALS (ORIGINAL SIGNATURES ON BOTH) to:
Secretary of State, Rm. 204, State House, Concord, NH 03301-4989